



13604  
RECORDATION NO. .... Filed 1425

RECORDATION NO. .... Filed 142

File No. A-11702

MAR 23 1982 - 10 25 AM

MAR 23 1982 - 25 AM  
AS

JOAN A. SCHRAMM  
J. S. EDWARDS  
FRANCES L. TURNER  
ASSISTANT SECRETARIES

250 DIRECT DIAL NUMBER

(312) 559-6165

**INTERSTATE COMMERCE COMMISSION**

INTERSTATE COMMERCE COMMISSION (3)

Agatha L. Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Date ..... MAR 23 1982

Fee \$ .....50.00.....

ICC Washington, D. C.

Dear Ms. Mergenovich:

Pursuant to Section 11303 (formerly Section 20c) of the Interstate Commerce Act, enclosed for recordation are counterparts of Conditional Sale Agreement and Assignment dated as of March 23, 1982, covering 190 Cabooses, 149 Covered Hoppers, 11 Gondolas and 100 60' Box Cars as listed in Schedule A attached to the Agreement.

The names and addresses of the parties to the transaction are as follows:

1. Conditional Sale Agreement between North Western Leasing Company, One North Western Center, Chicago, IL 60606 and this Company, One North Western Center, Chicago, IL 60606. *Chen* *Pichers*
2. Agreement and Assignment between Bank of America National Trust and Savings Association, Assignee, 30 Van Ness Avenue, San Francisco, California 94104 and North Western Leasing Company, One North Western Center, Chicago, IL 60606. *assign* *assign*

Enclosed is our check for \$50.00 to cover your recording fee. Please assign a sub-file number for the Agreement and Assignment. Keep one counterpart for your files and return the other counterparts showing your recordation data.

Sincerely,

J. S. Edwards  
Assistant Secretary

JSE/baf  
Encl.

cc: J. A. Barnes  
G. R. Charles  
R. D. Smith  
F. E. Cunningham, Attn: R. DeWitt  
M. H. Shumate  
R. F. Guenther, Attn: J. James

D. E. Stockham, Attn: P. J. Brod  
Arthur Anderson & Co.  
Attn: G. Holdren

ONE NORTH WESTERN CENTER / CHICAGO, ILLINOIS 60606

**Interstate Commerce Commission**

**Washington, D.C. 20423**

**3/23/82**

**OFFICE OF THE SECRETARY**

**J.S. Edwards**

**Assist. Secretary**

**Chicago North Western Transp. Co.**

**One North Western Center**

**Chicago, Illinois 60606**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **3/23/82** at **10:25am**, and assigned re-recording number(s). **13604**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

RECORDATION NO. 13604 Filed 1425

COUNTERPART

No. 4 of 7  
A-331

MAR 23 1982 10 25 AM

~~INTERSTATE COMMERCE COMMISSION~~

CONDITIONAL SALE AGREEMENT

Dated as of March 23, 1982

between

NORTH WESTERN LEASING COMPANY

and

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of March 23, 1982

between

NORTH WESTERN LEASING COMPANY

and

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

L/P-201-3

## CONDITIONAL SALE AGREEMENT

CONDITIONAL SALE AGREEMENT dated as of March 23, 1982, between NORTH WESTERN LEASING COMPANY, a Delaware corporation (hereinafter called the "Seller or the Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called the "Railroad").

WHEREAS, the Seller has agreed to supply, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule A hereto (hereinafter called the "Equipment");

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1 Assignment; Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, NORTH WESTERN LEASING COMPANY and any successor or successors for the time being to its properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment or which are not vested in any assignee or assignees until satisfaction of conditions contained in such assignment. The term "Seller", whenever used in this Agreement, means, both before and after any such assignment, NORTH WESTERN LEASING COMPANY and any successor or successors for the time being to its respective properties and businesses.

ARTICLE 2. Sale. Pursuant to this Agreement, the Seller will sell and deliver to the Railroad, and the Railroad will purchase from the Seller and accept delivery of and pay for (as hereinafter provided), all of the Equipment. Each unit of the Equipment shall conform to the specifications applicable thereto, including such modifications thereof as may be agreed upon in writing between the Seller and the Railroad (which specifications, with such modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of Equipment shall, on the date of delivery thereof to the Railroad, in each case conform to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment.

ARTICLE 3. Delivery. The Seller will deliver the units of Equipment to the Railroad, with freight charges prepaid, at the place or places specified by the Railroad.

Upon delivery of each unit or of a number of units of the Equipment, if each such unit conforms to the Specifications, requirements and standards applicable thereto, an authorized representative of the Railroad shall execute and deliver to the Seller a certificate of acceptance (hereinafter called the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Railroad. The Railroad's execution and delivery of a Certificate of Acceptance shall conclusively establish that such Equipment is acceptable to and accepted by the Railroad, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Equipment is, insofar as this Agreement is concerned, in good order and condition and appears to conform with the Specifications. By execution and delivery of such Certificate of Acceptance, the Railroad represents that it has no knowledge of any such defect.

On delivery and acceptance of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit. Any unit of Equipment not delivered, accepted and settled for on or prior to the earlier of (i) the date which is the second quarterly anniversary of the Deposit Date (as defined in Article 4) or (ii) June 30, 1982 (hereinafter called the Cut-Off Date) shall be excluded from this Agreement and from the term "Equipment" as used herein, and the Railroad shall be relieved of its obligation to purchase and pay for any such unit.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule A hereto, and shall be subject to such increase or decrease as is agreed to by the Seller and the Railroad. The term "Purchase Price" as is used herein shall mean the base price or prices of the Equipment as so increased or decreased, as set forth in the Seller's invoice or invoices delivered to the Railroad.

For the purpose of settlement therefore, the Equipment shall be divided into such number of groups of units (each such group being hereinafter called a Group) as the Seller and the Railroad may agree to. The term "Closing Date" with respect to any Group shall mean such date not later than the Cut-Off Date (as defined in Article 3), occurring not more than ten business days following presentation by the Seller to the Railroad of an invoice for the Purchase Price of such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at

least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in California are authorized or obligated to remain closed.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

- (a) on the Closing Date for each Group, an amount equal to at least 20% of the Purchase Price of all units of Equipment in such Group.
- (b) in 28 consecutive equal (except for appropriate adjustment of the final installment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 28, result in an amount ending in an integral cent) quarter-annual installments payable in arrears, as hereinafter provided, an amount equal to the aggregate of the Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the Conditional Sale Indebtedness).

The installments of the Conditional Sale Indebtedness shall be payable quarter-annually in arrears on the 7th day of March, June, September, and December in each year commencing on March 7, 1985 to and including December 7, 1991. The unpaid Conditional Sale Indebtedness shall bear interest for each Interest Period (as defined in the Finance Agreement hereinafter referred to) from the Closing Date for each group at the applicable CSA Interest Rate determined in accordance with Section 3.1 of the Finance Agreement (as defined in Article 6) for such Interest Period. Such interest shall be payable quarterly in arrears on the 7th day of March, June, September and December of each year commencing on June 7, 1982.

All payments of principal and interest due under this Agreement shall be made in immediately available funds on or before 11:00 a.m., Chicago time, on the date due; and funds received after that hour shall be deemed to have been received on the next business day. If any such payment of principal or interest shall become due on other than a business day, such payment shall be made on the next business day and, in the case of a principal payment, such extension of time shall be included in computing interest in connection with such payment. All interest under this Agreement shall be calculated in accordance with Section 4 of the Finance Agreement.

The Railroad will pay upon demand to the extent legally enforceable interest at the rate per annum equal to (x) the CSA Interest Rate plus (y) 1.00% on all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

At the Railroad's option but subject to Section 8.11, the Conditional Sale Indebtedness or any installment thereof shall be prepayable in whole or in part on the last day of any Interest Period during the seven-year period commencing on December 7, 1984 with accrued interest.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expenses to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license or registration fees, assessments, charges, fines, levies, imposts, duties, withholdings, stamp taxes and penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, use, payment, shipment, delivery or transfer of title or other disposition under the

terms hereof (all such expenses, taxes, license fees, assessments, charges, fines, levies, imposts, duties, withholdings, stamp taxes and penalties, together with any interest payable with respect thereto, being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. Without limiting the foregoing, the Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its interest therein (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interest or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor believes in its reasonable opinion that it shall have been legally liable with respect thereto (as evidenced, if the Railroad so requests, by an opinion of counsel for the Vendor, the reasonable fees and out-of-pocket expenses of which counsel shall be paid by the Railroad) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Security Interest in the Equipment. The Seller and the Railroad may enter into other conditional sale agreements for the purchase by the Railroad of railroad equipment, and the Railroad or the Seller may cause Bank of America National Trust and Savings Association (hereinafter called the "Assignee"), pursuant to a Finance Agreement dated as of June 15, 1981, (as it may be amended from time to time) among the Railroad, the Seller and the Assignee, to acquire by assignment from the Seller its interest in such equipment and conditional sale agreements (such conditional sale agreements being hereinafter called the "Related Agreements"). In consideration for the Seller's entering into this Agreement and each of the Related Agreements to which it is a party, and for the Assignee's entering into the related assignments, the Railroad agrees that the Equipment shall be security for the



indebtedness and other obligations of the Railroad under all the Related Agreements, and the Railroad does hereby grant to the Seller prior to any assignment of this Agreement to the Assignee and to the Assignee after such assignment (the grantee being in each such case defined as the "Vendor" as provided in Article 1 hereof) a continuing security interest in the Equipment to secure the payment of the indebtedness and performance of the obligations of the Railroad under each Related Agreement in accordance with the terms thereof as though the Equipment were part of the equipment described therein; provided, however, that if the Railroad is indebted to the Vendor under any Related Agreement at any time after the Railroad shall have paid under this Agreement the full indebtedness in respect of the Purchase Price of all units of the Equipment, and any such unit suffers a Casualty Occurrence (as defined in Article 8 hereof) or is disposed of by the Railroad in the ordinary course of business, no deposit, prepayment or additional security shall be required under Article 8 or under any Related Agreement or otherwise, and, provided there is then no existing default under any Related Agreement, the Vendor's security interest in such unit shall be deemed to be terminated and released upon such disposition or occurrence and absolute right to the possession of, title to, and property in such unit shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Railroad and at the Railroad's expense, will execute and deliver to the Railroad or the Railroad's vendee or nominee, a bill of sale (without warranties except that such unit is free of all liens, security interests and other encumbrances created by, through or under the Vendor) for such unit, and such other documents as may be necessary or appropriate to make clear upon the public records the release of the security interest of the Vendor in such unit.

The Vendor shall and hereby does retain a continuing security interest in the Equipment until the Railroad shall have made all its payments and shall have kept and performed all its agreements and obligations under this Agreement and under the Related Agreements, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment (except additions that are not required by Article 9 hereof and that are readily removable without causing material damage to the unit) and any and all replacements of the Equipment and of parts thereof and additions thereto (except as provided above) shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in this Article 6 and in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment and in respect of the price of the equipment described in the Finance Agreement and the Related Agreements, together with interest and all other payments as herein and in the Finance Agreement and the Related Agreements provided, shall have been paid, and all the Railroad's obligations herein and in the Finance Agreement and the Related Agreements contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad and at the Railroad's expense at that time will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Railroad, or upon its order (such bill of sale to be without warranty except that the Equipment is free of all liens, security interests and other encumbrances created by, through or under the Vendor), and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the security interest of the Vendor in the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will, on and after the Cut-Off Date, cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement filed with the Interstate Commerce Commission" or the name of the Vendor followed by the words "Agent, Owner", or other

appropriate markings approved by the Vendor with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Railroad will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, or, in the opinion of the Railroad, shall no longer be economically useful to the Railroad, or shall be irreparably damaged or otherwise rendered unsuitable or unfit for use from any cause whatsoever, or shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a stated period which exceeds the remaining term of this Agreement (such occurrence being hereinafter called Casualty Occurrences), the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). The Railroad shall, on the next date for the payment of an installment of Conditional Sale Indebtedness or interest hereunder occurring thirty (30) days after it has knowledge of such event, pay to the Vendor a sum equal to the aggregate Casualty Value (as defined herein) of such units of the Equipment as of the date of payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall, as the Railroad may direct in a written instrument filed with the Vendor, be applied (so long as no event of default shall have occurred and be continuing), in whole or in part, toward the cost of a new or used unit or units of equipment in good condition and complying with all the provisions of the second paragraph of Article 9 hereof to replace units suffering a Casualty Occurrence; provided, however, that equipment other than freight cars,

locomotives, cabooses, or other rolling stock shall replace only units of equipment that suffered a Casualty Occurrence and are not rolling stock. Any unit of replacement equipment shall have a remaining useful life at least as long as that which the unit being replaced would have had but for the Casualty Occurrence.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence (including a replacement unit) shall be deemed to be the Purchase Price of such unit (or cost thereof in the case of a replacement unit) less an amount representing (as of the date that the Railroad determines that such unit suffered a Casualty Occurrence) depreciation on such unit at the rate of 7% per annum for units of rolling stock and 10% per annum for other units, but in no event shall the Casualty Value be less than the Conditional Sale Indebtedness in respect of such unit as of the date that the Railroad determines that such unit suffered a Casualty Occurrence.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be warranted by the Railroad or third parties in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith:

(1) a certificate of a Vice President, an Assistant Vice President, or the Controller or Chief Accounting Officer of the Railroad certifying as to the matters hereinabove set forth in this Article 8; and

(2) an opinion of Counsel for the Railroad that the Vendor has a valid and perfected security interest in such replacement unit, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement (and, if such unit is covered by a Tax Benefit Transfer Agreement (as defined in the Finance Agreement), such opinion shall, in that respect, be to the effect set forth in

the opinion of counsel required by Section 4 of the Agreement and Assignment), that such unit has come under and become subject to this Agreement and that all necessary filings and recordings have been made to perfect the security interest of the Vendor therein.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 or A-2 by Standard & Poor's Corporation or prime-1 or prime-2 by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of or bankers' acceptances accepted by, domestic commercial banks in the United States of America having capital and surplus in excess of \$50,000,000 in each case maturing in not more than one year from the date of such investment (such investments being hereinafter called Investments). Any such obligations may from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad and at the Railroad's expense, after payment by the Railroad of a sum equal to (A) the Casualty Value of such Equipment plus (B) any cost and expenses of the Vendor in connection with such sale for which the Vendor is to be reimbursed hereunder, execute and deliver

to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties except that such Equipment is free of all liens, security interests or other encumbrances created by, through or under the Vendor) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

ARTICLE 9. Insurance, Maintenance, Compliance with Laws and Rules. The Railroad will, at all times during the term of this Agreement, at its own expense, cause to be carried and maintained property insurance and public liability insurance in respect of the units of Equipment at the time subject hereto in amounts (subject to Railroad's customary deductibles) and against risks customarily insured against by railroad companies in respect of similar equipment, and, in any event, comparable in amounts and against risks customarily insured against by the Railroad in respect of similar equipment owned by it. The Railroad will deliver on the Closing Date and annually thereafter on or before April 30, certificates (or verifications) of insurance from the Railroad's insurance broker evidencing any property and liability insurance effected or in force in accordance with the provisions of this Article. The Railroad will cause the Vendor to be named as additional insured. All policies evidenced by certificates of insurance shall contain an agreement of the insurers that such policies shall not be cancelled without at least 10 days' prior written notice to the Vendor in the event of nonpayment of premium by the Railroad when due.

Any net insurance proceeds (excluding public liability insurance) resulting from insurance carried by the Railroad or condemnation payments received by the Vendor in respect of the Equipment suffering a Casualty Occurrence shall be deducted from the amounts payable by the Railroad to the Vendor in respect of Casualty Occurrences pursuant to Article 8. If the Vendor shall receive any such net insurance proceeds or condemnation payments and the Railroad already has paid the full Casualty Value with respect to the unit for which such proceeds are received, the Vendor shall pay such net insurance proceeds or condemnation payments to the Railroad; provided, however, that if an event of Default or other event (hereinafter called a "Default") which with notice, demand and/or lapse of time, would constitute such an Event of Default shall have occurred and be continuing, then the amount otherwise payable to the Railroad may be retained by the Vendor and applied to discharge the liabilities of the Railroad under this Agreement. All net insurance proceeds (excluding public liability insurance) received by the Vendor or the Railroad with respect to a unit not suffering a Casualty Occurrence

shall be applied in payment of the cost of repairing the damage to such item, but no such proceeds shall be paid to the Railroad until the Vendor shall have received a certificate signed by an authorized officer of the Railroad to the effect that such damage has been fully repaired; and any balance remaining after the completion of such repairs shall be paid to the Railroad unless an Event of the Default or Default shall have occurred and be continuing, in which case the amount otherwise payable to the Railroad may be retained by the Vendor and applied to discharge the liabilities of the Railroad hereunder.

The Vendor shall not be liable for the payment of premiums and assessments under any insurance policy and such insurance shall be primary without right of contribution from any other insurance which is carried by the Vendor to the extent that such other insurance provides it with contingent and/or excess liability insurance with respect to its interest as such in the Equipment.

The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense. The Railroad also agrees only to use the Equipment in the manner for which it was designed and intended. Without limiting the foregoing, the Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in condition suitable for use in interchange if and to the extent permitted by the Interchange Rules of the Association of American Railroads, all at the Railroad's expense. Any parts installed or replacements made by the Railroad to comply therewith shall be considered accessions and immediately subject to the security interest granted by this Agreement without further act. The Railroad shall make no other additions or improvements to the Equipment unless the same are readily removable without causing material damage to such Equipment or, if not readily removable, the same do not decrease the value, or modify the intended and permitted uses, of the Equipment. Title to any readily removable non-mandatory additions or improvements shall remain with the Railroad free of any security interest hereunder, but additions or improvements which are not readily removable shall without further act be immediately subject to the security interest granted by this Agreement.

During the term of this Agreement the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American

Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before April 30 in each year, commencing in 1982, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have been withdrawn from use pending repairs (other than running repairs) (such units being hereinafter called the "Bad Order Units") or that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, (b) setting forth the amount, description and numbers of any Bad Order Units that have been repaired and that are in use on the date of such statement, and (c) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. If, as set forth in such statement, the number of Bad Order Units withdrawn from use as of the date of such statement (giving effect to repairs made on or prior to that date) exceeds the number equal to 10% of all the units of the Equipment, then the Bad Order Units in excess of such number shall be identified by the Railroad in such statement and shall be deemed to have suffered a Casualty Occurrence on the date of such statement, and payment therefor shall be made as provided in Article 8 hereof. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof; provided, however, that such possession and use of rolling stock units of equipment shall be



upon the lines of railroad owned or operated by the Railroad either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Seller to the Railroad, but only upon and subject to all the terms and conditions of this Agreement. The Railroad shall not, without the prior written consent of the Vendor (which consent will not be unreasonably withheld), have the right to lease the Equipment or any unit thereof; provided, however, that the Railroad shall have the right to lease the Equipment or any unit thereof to any railroad organized under the laws of the United States of America or any state thereof or the District of Columbia without the Vendor's consent if such lease (i) shall provide that the Equipment will be operated and maintained in accordance with the terms hereof, and (ii) is for a term not longer than the lesser of six months or one day less than the remaining term of this Agreement. Any lease and the rights of the lessee thereunder shall in all events be expressly subject and subordinate to this Agreement and the rights and interests of the Vendor and its successors and assigns hereunder. The Railroad shall, promptly upon entering into any lease, furnish to the Vendor a written statement setting forth the amount, description and number of the units of the Equipment being leased and attaching a copy of the lease. In no event shall any assignment or lease entered into by the Railroad relieve the Railroad of any liability or obligation hereunder which shall be and remain those of a principal and not a surety. Anything contained herein to the contrary notwithstanding, the Railroad shall at no time while this Agreement is in effect assign or permit the assignment of any unit of Equipment to, or use or permit the use by any assignee or lessee of any unit of Equipment in, service involving regular operation outside the contiguous continental United States.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior to the Vendor's interest therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts

paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent nor shall the interest of the lessor under a Tax Benefit Transfer Agreement constitute a claim, lien, security interest or encumbrance on any Equipment.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and costs, charges, and expenses in connection therewith, including reasonable counsel fees, arising out of (i) retention by the Vendor of a security interest in the Equipment, (ii) the use and operation, or the maintenance, repair or replacement, thereof by the Railroad during the period when said security interest remains in the Vendor, (iii) the transfer of said security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement, (iv) without limiting the foregoing, the construction, reconstruction, possession, purchase, delivery, installation, ownership, leasing, return, sale or other disposition of the Equipment, (v) the condition of the Equipment at any time, (vi) the acts or omissions to act of the Railroad, whether for itself or as agent or attorney-in-fact for the Vendor hereunder or under any Related Agreement, or (vii) claims for negligence or strict liability in tort relating to the Equipment. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities, Warranty of Material and Workmanship. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against any and all losses, damages, liabilities, claims, demands, costs, charges and expenses including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor, its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right

to possession of any unit of the Equipment without first obtaining the written consent, not to be unreasonably withheld, of the Vendor. A sale, assignment, transfer, disposition or lease to a railroad company organized under the laws of the United States of America or any of the States thereof or other purchaser or lessee which shall acquire or lease all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, or an assignment by the Railroad to one of its wholly-owned subsidiary companies, shall not be deemed a breach of this covenant, provided that the Railroad (with binding effect upon successors of the Railroad) agrees not to be released as a primary obligor for the payment of principal and interest when due and payable (whether by acceleration or otherwise) on indebtedness outstanding under this Agreement on the date of such sale, assignment, transfer or disposition.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Seller from, any of the obligations of the Seller to sell and deliver the Equipment in accordance with this Agreement or to respond to its obligations and warranties hereunder, or relieve the Railroad of any of its obligations to the Seller which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment sellers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance

to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any defect in the Seller's title to, or any interruption from whatsoever cause in the use, operation, or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment, or any part thereof, or by reason of any other indebtedness, howsoever and whenever arising, of the Seller, to the Railroad or to any other person, firm, or corporation or to any governmental authority, or any breach of any obligation of the Seller with respect to the Equipment or the manufacture, construction, delivery, repair or warranty thereof, or from any other cause whatsoever, it being the intent hereof that the Railroad shall be unconditionally and absolutely obligated to pay the Vendor all of the amounts which are the subject of its assignment. Any and all obligations of the Seller, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Seller.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee or prior to the date for settlement, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement when payment thereof shall be due hereunder and such failure shall continue for more than 5 business days after written notice thereof from the Vendor; or

(b) the Railroad or the Seller shall fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of the Finance Agreement or of the Related Agreements referred to in Article 6 hereof, on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance and such failure shall continue for more than 30 days after the Vendor shall have demanded in writing performance thereof; or

(c) any representation or warranty on the part of the Railroad or the Seller made herein, in the Finance Agreement, in any Related Agreement or in any of the other operative agreements with respect hereto or thereto or in any statement or certificate furnished to the Vendor or its assigns pursuant to or in connection with this Agreement, the Finance Agreement, any Related Agreements, or any of the other operative agreements with respect hereto or thereto is untrue, false or misleading in any material respect as of the date of issuance or making thereof, and, in the case of representations or warranties set forth in paragraphs 2, 4, or 8 of Attachment A to the certificates delivered pursuant to Section 6(g) of the Finance Agreement, any such representation or warranty has continued to be untrue, false or misleading for thirty days after notice with respect thereto from the Vendor; or

(d) a case shall be commenced under Subchapter IV of Chapter 11 of the Bankruptcy Code (as such Subchapter IV is now in effect or hereafter may be amended or replaced), by or against the Railroad and, unless such petition or case shall have been dismissed, nullified or otherwise rendered ineffective (but then only so long as such ineffectiveness shall continue), (i) within 60 days after such case shall have been commenced, (A) all the obligations of the Railroad under this Agreement shall not have been duly assumed for the then unexpired term hereof in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such case in such manner that such obligations shall have, to the fullest extent permitted by law, the same status and priority as to payment as obligations incurred by such trustee or trustees which are entitled to payment as administrative expenses pursuant to 11 U.S.C. 507(a)(1) (as such section is now in effect or hereafter may be amended or replaced) and (B) all events of default under subparagraphs (a) or (b) of this Section 16 shall not have been cured, and (ii) thereafter during the pendency of the case, the trustee or trustees appointed in such case shall not cure in a timely fashion all other events of default under subparagraphs (a) or (b) of this Section 16 which from time to time occur hereunder; or

(e) any other case or proceedings shall be commenced by or against the Railroad for any relief or adjudication under any bankruptcy or insolvency law, or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition or extension or the Board of Directors of the Railroad shall authorize the commencement of any such other case or proceedings, and, if any such case or proceedings have been commenced against the Railroad, such case or proceedings shall not have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue) within 60 days after such case or proceedings shall have commenced; or the Railroad shall make an assignment for the benefit of creditors; or the Railroad admits in writing its inability to pay its debts generally as they become due, or is unable to pay or is generally not paying its debts as they become due, and such admission, inability or failure shall continue for 30 days after notice thereof from the Vendor; or a trustee, custodian or receiver is appointed for the Railroad or for a major part of the property thereof and is not discharged within 60 days after such appointment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Without limiting the other rights of the Vendor, the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of

the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services, and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad east of the Missouri River for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines east of the Missouri River as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad east of the Missouri River as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the

option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad east of the Missouri River until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (whether before or after taking possession of the Equipment as hereinbefore this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in



writing to the Vendor within 30 days for the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon not less than 15 days' notice to the Railroad and to any other persons to whom the law may require notice of the time and place and upon any other notice which may be required by law, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at a public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than 15 days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for

bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at a price at least equal to the amount described in the proviso to the first sentence of the foregoing paragraph. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange applicable (if any) for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof, applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment

therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be applied to any sum due under the Related Agreements, in such order as the Vendor may elect, and if any further surplus remains it shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U. S. C., §11303; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit, and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such

filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Seller) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, but excluding all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 400 West Madison Street, Chicago, Illinois 60606, attention Vice President-Finance;

(b) to the Seller, at 400 West Madison Street, Chicago, Illinois 60606, attention Vice President-Finance, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive officers are located in the state specified in clause (a) of Article 21 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of California; provided, however, that the parties shall be

entitled to all rights conferred by 49 U. S. C. §11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. No Warranty By Vendor. THE RAILROAD ACKNOWLEDGES INSOFAR AS THE VENDOR IS CONCERNED THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE EQUIPMENT IS SOLD AS-IS WITHOUT WARRANTY OR REPRESENTATION EITHER EXPRESS OR IMPLIED, AS TO (i) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY UNIT OR UNITS OF EQUIPMENT, INCLUDING, WITHOUT LIMITATION, THEIR VALUE, CONDITION, DESIGN OR OPERATION, OR (ii) ANY OTHER MATTER WHATSOEVER IT BEING UNDERSTOOD AND AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY THE RAILROAD.


ARTICLE 25. Execution. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

CHICAGO AND NORTH WESTERN  
TRANSPORTATION COMPANY

By   
Vice President

[Corporate Seal]

ATTEST: 

Assistant Secretary

NORTH WESTERN LEASING COMPANY

By   
Vice President

[Corporate Seal]

ATTEST:

  
Assistant Secretary

State of Illinois,  
County of Cook,

)  
) SS:

On this 23<sup>rd</sup> day of March, 1982, before me personally appeared P. A. Tingleff, to me personally known who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Virginia S. Carls  
Notary Public

[Notarial Seal]

My Commission expires:  
March 31, 1983

STATE OF ILLINOIS,  
COUNTY OF COOK,

)  
) SS:

On this 23<sup>rd</sup> day of March, 1982, before me personally appeared P. A. Tingleff, to me personally known, who, being by me duly sworn says that he is a Vice President of NORTH WESTERN LEASING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Virginia S. Carls  
Notary Public

[Notarial Seal]

My Commission expires  
March 31, 1983  
L/P-201-3

SCHEDULE A

<u>Quantity</u>	<u>Description</u>	<u>Railroad System No.</u>	<u>Purchase Price</u>
19D	Caboose	CNW 10349	\$ 30,000
		10350	30,000
		10351	30,000
		10352	30,000
		10355	30,000
		10357	30,000
		10358	30,000
		10359	30,000
		10360	30,000
		10361	30,000
		10362	30,000
		10363	30,000
		10364	30,000
		10365	30,000
		10366	30,000
		10367	30,000
		10368	30,000
		10369	30,000
		10370	30,000
		10371	30,000
		10374	30,000
		10375	30,000
		10376	30,000
		10377	30,000
		10378	30,000
		10379	30,000
		10380	30,000
		10381	30,000
		10382	30,000
		10383	30,000
		10385	30,000
		10386	30,000
		10387	30,000
		10388	30,000
		10389	30,000
		10391	30,000
		10392	30,000
		10393	30,000
		10395	30,000
		10396	30,000
		10398	30,000
		10399	30,000
		10400	30,000
		10401	30,000
		10402	30,000
		10850	30,000
		10851	30,000
		10853	30,000
		10854	30,000
		10855	30,000
		10856	30,000
		10857	30,000
		10858	30,000
		10859	30,000
		10860	30,000



Quantity	Description	Railroad System No.	Purchase Price
	CNW	10861	\$ 30,000
		10862	30,000
		10863	30,000
		10864	30,000
		10865	30,000
		10867	30,000
		10869	30,000
		10870	30,000
		10871	30,000
		10872	30,000
		10873	30,000
		10907	36,000
		10909	36,000
		10916	36,000
		10921	36,000
		10927	36,000
		10928	36,000
		10937	36,000
		10938	36,000
		10996	36,000
		10997	36,000
		10998	36,000
		10999	36,000
		11000	36,000
		11001	36,000
		11002	36,000
		11003	36,000
		11004	36,000
		11005	36,000
		11006	36,000
		11007	36,000
		11008	36,000
		11009	36,000
		11010	36,000
		11011	36,000
		11012	36,000
		11013	36,000
		11014	36,000
		11015	36,000
		11016	36,000
		11017	36,000
		11018	36,000
		11019	36,000
		11020	36,000
		11021	36,000
		11022	36,000
		11023	36,000
		11025	36,000
		11026	36,000
		11027	36,000
		11028	36,000
		11029	36,000
		11030	36,000

Quantity	Description	Railroad System No.	Purchase Price
	CNW	11031	\$ 36,000
		11032	36,000
		11033	36,000
		11034	36,000
		11035	36,000
		11036	36,000
		11037	36,000
		11038	36,000
		11040	36,000
		11041	36,000
		11042	36,000
		11043	36,000
		11044	36,000
		11045	36,000
		11046	36,000
		11047	36,000
		11048	36,000
		11049	36,000
		11076	46,000
		11083	46,000
		11086	46,000
		11096	46,000
		11100	46,000
		11101	46,000
		11102	46,000
		11103	46,000
		11104	46,000
		11105	46,000
		11106	46,000
		11107	46,000
		11108	46,000
		11109	46,000
		11110	46,000
		11111	46,000
		11113	46,000
		11114	46,000
		11115	46,000
		11116	46,000
		11117	46,000
		11119	46,000
		11120	46,000
		11121	46,000
		11122	46,000
		11123	46,000
		11124	46,000
		11125	46,000
		11126	46,000
		11127	46,000
		11129	46,000
		11130	46,000
		11132	46,000
		11133	46,000

Quantity	Description	Railroad System No.	Purchase Price
		CNW 11134	\$ 46,000
		11135	46,000
		11136	46,000
		11137	46,000
		11138	46,000
		11139	46,000
		11140	46,000
		11141	46,000
		11142	46,000
		11144	46,000
		11145	46,000
		11146	46,000
		11147	46,000
		11148	46,000
		11149	46,000
		11201	62,000
		11203	62,000
		11204	62,000
		11205	62,000
		11206	62,000
		11207	62,000
		11208	62,000
		11209	62,000
		11210	62,000
		11300	36,000
		11302	46,000
		11305	36,000
		11306	36,000
		11308	36,000
		11309	30,000
		Sub-total	\$ 7,172,000

146	Covered Hoppers	96470	15,727
		96471	15,727
		96472	15,727
		96473	15,727
		96475	15,727
		96476	15,727
		96477	15,727
		96478	15,727
		96479	15,727
		96480	15,727
		96481.	15,727
		96483	15,727
		96484	15,727
		96485	15,727
		96486	15,727
		96487	15,727
		96488	15,727
		96489	15,727

Quantity	Description	Railroad System No.	Purchase Price
		CNW 96490	\$ 15,727
		96491	15,727
		96492	15,727
		96493	15,727
		96494	15,727
		96495	15,727
		96496	15,727
		96497	15,727
		96498	15,727
		96499	15,727
		96500	15,727
		96501	15,727
		96502	15,727
		96503	15,727
		96504	15,727
		96505	15,727
		96506	15,727
		96507	15,727
		96508	15,727
		96509	15,727
		96510	15,727
		96511	15,727
		96512	15,727
		96513	15,727
		96514	15,727
		96515	15,727
		96516	15,727
		96517	15,727
		96518	15,727
		96519	15,727
		96520	15,727
		96521	15,727
		96522	15,727
		96524	15,727
		96525	15,727
		96526	15,727
		96527	15,727
		96528	15,727
		96529	15,727
		96530	15,727
		96531	15,727
		96532	15,727
		96533	15,727
		96534	15,727
		96535	15,727
		96536	15,727
		96537	15,727
		96538	15,727
		96539	15,727
		96540	15,727
		96541	15,727
		96542	15,727
		96543	15,727

Quantity	Description	Railroad System No.	Purchase Price
	CNW	96544	\$ 15,727
		96545	15,727
		96546	15,727
		96547	15,727
		96548	15,727
		96549	15,727
		96550	15,727
		96551	15,727
		96552	15,727
		96553	15,727
		96554	15,727
		96555	15,727
		96556	15,727
		96557	15,727
		96558	15,727
		96559	15,727
		96560	15,727
		96561	15,727
		96562	15,727
		96563	15,727
		96564	15,727
		96565	15,727
		96566	15,727
		96567	15,727
		96568	15,727
		96569	15,727
		96570	15,727
		96571	15,727
		96572	15,727
		96573	15,727
		96574	15,727
		96575	15,727
		96576	15,727
		96577	15,727
		96578	15,727
		96579	15,727
		96580	15,727
		96581	15,727
		96582	15,727
		96583	15,727
		96584	15,727
		96585	15,727
		96586	15,727
		96587	15,727
		96588	15,727
		96589	15,727
		96590	15,727
		96591	15,727
		96592	15,727
		96593	15,727
		96594	15,727
		96595	15,727
		96596	15,727

Quantity	Description	Railroad System No.	Purchase Price
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CNW	96597	\$	15,727
	96598		15,727
	96599		15,727
	96600		15,727
	96601		15,727
	96602		15,727
	96603		15,727
	96604		15,727
	96605		15,727
	96606		15,727
	96607		15,727
	96608		15,727
	96609		15,727
	96610		15,727
	96611		15,727
	96612		15,727
	96613		15,727
	96614		15,727
	96615		15,727
	96616		15,727
	96617		15,727
	96618		15,727

Sub-total	\$2,296,142
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11	Gondolas	CNW	88400	17,797
			88401	17,797
			88403	17,797
			88404	17,797
			88405	17,797
			88406	17,797
			88407	17,797
			88408	17,797
			88409	17,797
			88410	17,797
			88412	17,797

Sub-total	\$ 195,767
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3	Covered Hoppers	CNW	175003	\$ 18,130
			175005	18,130
			175006	18,130

Sub-total	\$ 54,390
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Quantity	Description	Railroad System No.	Purchase Price
100	60' Box Cars	CNW 91417	\$ 25,265
		91418	25,265
		91419	25,265
		91421	25,265
		91422	25,265
		91423	25,265
		91424	25,265
		91425	25,265
		91426	25,265
		91427	25,265
		91428	25,265
		91429	25,265
		91430	25,265
		91431	25,265
		91432	25,265
		91433	25,265
		91434	25,265
		91435	25,265
		91436	25,265
		91437	25,265
		91438	25,265
		91439	25,265
		91440	25,265
		91441	25,265
		91442	25,265
		91443	25,265
		91444	25,265
		91446	25,265
		91447	25,265
		91448	25,265
		91449	25,265
		91450	25,265
		91451	30,333
		91452	30,333
		91453	30,333
		91454	30,333
		91455	30,333
		91456	30,333
		91457	30,333
		91458	30,333
		91459	30,333
		91460	30,333
		91461	30,333
		91462	30,333
		91463	30,333
		91464	30,333
		91465	30,333
		91466	30,333
		91467	30,333
		91468	30,333
		91469	30,333
		91470	30,333

Quantity	Description	Railroad System No.	Purchase Price
		CNW 91471	\$ 30,333
		91472	30,333
		91473	30,333
		91474	30,333
		91475	30,333
		91476	30,333
		91477	30,333
		91478	30,333
		91479	30,333
		91480	30,333
		91481	30,333
		91482	30,333
		91483	30,333
		91484	30,333
		91485	30,333
		91488	30,333
		91489	30,333
		91490	30,333
		91492	30,333
		91493	30,333
		91494	30,333
		91495	30,333
		91496	29,371
		91589	30,333
		91590	26,998
		91591	26,998
		91592	26,998
		91593	26,998
		91594	26,998
		91595	26,998
		91596	26,998
		91597	26,998
		91598	26,998
		91599	26,998
		91600	26,998
		91601	26,998
		91602	26,998
		91603	26,998
		91604	26,998
		91606	26,998
		91608	26,998
		91609	26,998
		91610	26,998
		91612	26,998
		91613	26,998
		91614	26,998
		91615	26,998
		91616	26,998
		Sub-total	\$2,790,122
			\$12,508,421
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